



DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

Federal Student Aid Programs (Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program)

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Waivers and modifications of statutory and regulatory provisions.

SUMMARY: The Secretary of Education (Secretary) is issuing updated waivers and modifications of statutory and regulatory provisions governing the Federal student financial aid programs under the authority of the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act or Act). The waivers and modifications in this document apply only to the national emergency concerning the coronavirus disease 2019 (COVID-19 pandemic).

DATES: The waivers and modifications of statutory and regulatory provisions are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Unless specifically noted within a waiver or modification identified below, a waiver or modification identified in this document expires at the end of the award year in which the COVID-19 national emergency expires, unless the waiver or modification is

otherwise extended by the Secretary in a document published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Richard Blasen, by telephone: (202)987-0315 or by email: Richard.Blasen@ed.gov.

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SUPPLEMENTARY INFORMATION: On December 11, 2020, the Secretary published a document in the *Federal Register* announcing waivers and modifications of statutory and regulatory requirements governing the Federal student financial aid programs under the authority of the HEROES Act, as codified at 20 U.S.C. 1098aa-1098ee. 85 FR 79856 (Dec. 11, 2020). On January 19, 2021, the Secretary published corrections to those updated waivers and modifications. 86 FR 5008 (Jan. 19, 2021). The Secretary is issuing this document to provide certain updated waivers and modifications under the HEROES Act.

The HEROES Act authorizes the Secretary to waive or modify any statutory or regulatory provision applicable to the Federal student financial assistance programs under title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070 *et seq.*, as the Secretary deems necessary in connection with a war or other military operation or national emergency to fulfill certain purposes

enumerated in the statute. 20 U.S.C. 1098bb(a). Such waivers or modifications may be provided to affected individuals who are recipients of Federal student financial assistance under title IV of the HEA; and to institutions of higher education (IHEs), eligible lenders, guaranty agencies (GAs), and other entities participating in the Federal student financial assistance programs under title IV of the HEA that are located in areas declared disaster areas by any Federal, State, or local official in connection with a national emergency, whose operations are significantly affected by such a disaster (affected entities). *Id.* 1098bb(a)(2)(A), (E). Affected individuals include, among others, any individual who "resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency" or any individual who "suffered direct economic hardship as a direct result of a . . . national emergency, as determined by the Secretary." *Id.* 1098ee(2)(C), (D). The Secretary may issue waivers and modifications "as may be necessary to ensure that" such individuals "are not placed in a worse position financially in relation to [their] financial assistance because of their status as affected individuals." *Id.* 1098bb(a)(2)(A). Affected entities "may be granted temporary relief from requirements that are rendered infeasible or unreasonable by a national emergency,

including due diligence requirements and reporting deadlines.” *Id.* 1098bb(a)(2)(E).

In 20 U.S.C. 1098bb(b)(1), the HEROES Act further provides that section 437 of the General Education Provisions Act (20 U.S.C. 1232) and section 553 of the Administrative Procedure Act (5 U.S.C. 553) do not apply to this waiver or modification of student financial assistance program provisions.

The Department recently published a memorandum outlining its interpretation of the HEROES Act. See Notice of Debt Cancellation Legal Memorandum, 87 FR 52943 (Aug. 30, 2022). That memorandum explained why a January 2021 memorandum authored by a former Principal Deputy General Counsel was substantively and procedurally deficient. See *id.* at 52944-45 & n.5.

On March 13, 2020, by Proclamation 9994, 85 FR 15337, the President declared a national emergency concerning the COVID-19 pandemic, which was extended on February 24, 2021 (86 FR 11599), and February 18, 2022 (87 FR 10289). The waivers and modifications provided in this document apply only to the declared national emergency due to the COVID-19 pandemic. Prior waivers granted by the Secretary under this Act remain in effect for affected individuals and affected entities, as defined in those waivers.

In 20 U.S.C. 1098ee, the HEROES Act provides definitions critical to determining whether a person is an

"affected individual" under the Act and, if so, which waivers and modifications apply to the affected individual. As noted above, the term "affected individual" includes any individual who "resides or is employed in an area that is declared a disaster area by any Federal, State, or local official in connection with a national emergency" or "any individual who "suffered direct economic hardship as a direct result of a national emergency, as determined by the Secretary." 20 U.S.C. 1098ee(2)(C), (D). Because the COVID-19 pandemic has been declared and continues to be a national emergency, and because the Federal Government has declared every State, the District of Columbia, and all five permanently populated United States territories to be disaster areas due to COVID-19, the "affected individuals" for purposes of the waivers and modifications described in this document include any person with a Federal student loan under title IV of the HEA.

Next, the Act describes in 20 U.S.C. 1098bb(a)(2) the purposes for which the Secretary may grant relief to "affected individuals." As relevant here, the Secretary may waive or modify statutory and regulatory provisions "as may be necessary to ensure" that "recipients of student financial assistance under title IV of the [HEA] who are affected individuals are not placed in a worse position financially in relation to that financial assistance because of their status as affected individuals." 20

U.S.C. 1098bb(a) (2) (A) . The statute also authorizes the Secretary to minimize administrative requirements placed on affected individuals who are recipients of student financial assistance to the extent possible without impairing the integrity of the student financial assistance programs, to ease the burden on such individuals and avoid inadvertent technical violations or defaults. *Id.*

1098bb(a) (2) (B) .

The Secretary determined that the financial harm caused by the COVID-19 pandemic has made the waivers and modifications described in this document necessary to ensure that affected individuals are not placed in a worse position financially with respect to their student loans because of that harm.¹ The Secretary further determined that the modifications and waivers as described in this document will help minimize the administrative burdens placed on affected individuals. The Secretary is publishing this document in the *Federal Register* in accordance with 20 U.S.C. 1098bb(b) (1) . The waivers and modifications are discussed further below:

- The automatic suspension of payment and application of a zero percent interest rate for affected individuals with federally held Direct Loans, federally held Federal Family Education Loans (FFEL), federally held Perkins Loans, federally held Health Education Assistance Loans

¹ <https://studentaid.gov/debt-relief-announcement>.

(HEAL), and defaulted FFEL loans subject to collection by a guaranty agency are further extended until December 31, 2022. The automatic suspension of payment and the application of a zero percent interest rate on loans held by the Department were extended to October 1, 2020, under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.² The Secretary previously extended those benefits through August 31, 2022, and on August 24, 2022, the Secretary announced the extension of those benefits through December 31, 2022. Affected individuals will be required to make payments on their loans beginning in January 2023.

- On August 24, 2022, the Secretary announced that he intended to discharge loans to address the financial hardship arising out of the COVID-19 pandemic on individuals who owe student loans. Specifically, the Department announced it intended to discharge certain amounts of Federal Direct Loans and FFEL loans held by the Department or subject to collection by a guaranty agency and Federal Perkins Loans held by the Department (covered loans). The Department announced that, subject to certain income limitations, it intended to discharge up to a total of \$20,000 in covered loans for affected individuals who received Pell Grants and up to a total of \$10,000 in covered loans for affected individuals who did not receive a Pell Grant. Granting relief on a class-wide basis in

² <https://www.congress.gov/bill/116th-congress/house-bill/748/text>.

this manner will also minimize administrative burdens and thus “ease the burden” on students who are affected individuals. 20 U.S.C. 1098bb(a)(2)(B); *see also id.* 1098bb(b)(3) (authorizing class-wide relief).

Prior waivers granted by the Secretary under the HEROES Act that are not otherwise mentioned in this document remain in effect for affected individuals, as defined in those waivers. See 85 FR 79856; 86 FR 5008.

WAIVER GRANTED UNDER THE HEROES ACT IN RESPONSE TO THE
COVID-19 PANDEMIC

Suspension of Payments under Section 3513 of the CARES
Act

Section 3513 of the CARES Act directs the Secretary to: (1) suspend all payments due, (2) cease interest accrual, and (3) suspend involuntary collections for loans that are held by the Department and made under parts D and B of title IV of the HEA through September 30, 2020. The section also directs the Secretary to deem each month for which a loan payment was suspended as if the borrower of the loan had made a payment for the purpose of any loan forgiveness program or loan rehabilitation program authorized under parts D or B for which the borrower would have otherwise qualified. Lastly, this section directs the Secretary to ensure that, for the purpose of reporting information about the loan to a consumer reporting agency,

any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower.

On August 8, 2020, President Donald J. Trump issued a memorandum directing the Secretary to continue to waive interest and payments on such loans until December 31, 2020. On December 4, 2020, at the direction of President Trump, the Department further extended the payment pause to January 31, 2021. On January 21, 2021, at the direction of President Joseph R. Biden, the Department further extended the pause through September 30, 2021. On August 6, 2021, the President authorized the Secretary to use his authority under the HEROES Act to extend the benefits provided under section 3513 of the CARES Act until January 31, 2022, for borrowers with federally held Perkins, HEAL, Direct, and FFEL loans. President Biden announced on December 22, 2021, that the Secretary would extend the waiver on interest and payments on such loans through May 1, 2022, and the Secretary further extended the benefits until August 31, 2022. Following these prior announcements, on August 24, 2022, the Secretary announced he was using his authority under the HEROES Act to modify the terms of the CARES Act to extend the waiver on interest and payments on such loans through December 31, 2022.³

The Secretary extends those waivers and modifications specified in the December 11, 2020, *Federal Register*

³ <https://studentaid.gov/debt-relief-announcement>.

document (85 FR 79856), that relate to the payment and collection of, and accumulation of interest on, Federal student loans, through December 31, 2022. The Department further extends the corresponding pause for FFEL loans held by guaranty agencies, as discussed in Dear Colleague Letter GEN-21-03, through December 31, 2022.

Debt Discharge

Pursuant to the HEROES Act, 20 U.S.C. 1098bb(a)(1), the Secretary modifies the provisions of: 20 U.S.C. 1087, which applies to the Direct Loan Program under 20 U.S.C. 1087a and 1087e; 20 U.S.C. 1087dd(g); and 34 CFR part 674, subpart D, and 34 CFR 682.402 and 685.212 to provide that, notwithstanding any other statutory or regulatory provision, the Department will discharge the balance of a borrower's eligible loans up to a maximum of: (a) \$20,000 for borrowers who received a Pell Grant and had an Adjusted Gross Income (AGI) below \$125,000 for an individual taxpayer or below \$250,000 for borrowers filing jointly or as a Head of Household, or as a qualifying widow(er) in either the 2020 or 2021 Federal tax year; or (b) \$10,000 for borrowers who did not receive a Pell Grant and had an AGI on a Federal tax return below \$125,000 if filed as an individual or below \$250,000 if filed as a joint return or as a Head of Household,⁴ or as a qualifying widow(er) in either the 2020 or 2021 Federal tax year. This waiver is

⁴ Adjusted Gross Income is defined as in 26 Internal Revenue Code (I.R.C.) 61-62. Head of Household is defined in 26 I.R.C. 2.

applicable to borrowers with eligible loans who apply by the deadline established by the Secretary (to the extent an application is required) and who are determined to be eligible by the Department. Borrowers who are eligible for relief without applying will have the option to opt out of the program. Eligible loans include the following categories of loans, provided they were disbursed by June 30, 2022: Direct Loans, FFEL loans held by the Department or subject to collection by a guaranty agency, and Perkins Loans held by the Department.

Direct Consolidation loans disbursed after June 30, 2022, and for which the repaid loans were loans described in the paragraph above, are also eligible for relief. However, Direct Consolidation loans disbursed after June 30, 2022, and for which the repaid loans include a FFEL loan not held by ED, are only eligible for relief if the borrower submitted an application to consolidate such loans prior to September 29, 2022.

Accessible Format: On request to Robin Moss, by telephone: (202) 453-7106 or by email: robin.moss@ed.gov, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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(Assistance Listing Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.063 and 84.268 William D. Ford Federal Direct Loan Program.)

Program Authority: 20 U.S.C. 1071, 1082, 1087a, 1087aa, Part F-1.

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